



POLICE DEPARTMENT

December 5, 2019

-----X
In the Matter of the Charges and Specifications :

Case No. 2018-19569

- against - :

Sergeant Christopher Viola :

Tax Registry No. 931386 :

70th Precinct :

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Rae Downes Koshetz, Esq.
747 Third Avenue, 20th Floor
New York, NY 10017

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Sergeant Christopher Viola, while assigned to the 70th Precinct, on or about May 17, 2017, while off-duty, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: while attending a Metallica Concert at the Nassau Coliseum, said Sergeant was asked to put out a cigarette by security personnel; refused to immediately do so and became combative, which resulted in him being physically removed from the concert venue. *(As amended)*

P.G. 203-10 Page 1, Paragraph 5

PUBLIC CONTACT-PROHIBITED
CONDUCT

2. Said Sergeant Christopher Viola, while assigned to the 70th Precinct, on or about May 17, 2017, while off-duty in Nassau County, did consume an intoxicant to the extent that said officer was unfit for duty. *(As amended)*

P.G. 203-04 Page 1 Paragraph 2

FITNESS FOR DUTY

3. Said Sergeant Christopher Viola, while assigned to the 70th Precinct, on or about May 17, 2017, while off-duty in Nassau County, having been involved in an unusual police occurrence, did thereafter fail and neglect to promptly notify the Operations Unit. *(As amended)*

P.G. 212-32 Page 1, Paragraph 2

OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 9 and October 10, 2019. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department called Bill Kosteas, Michael Cavanaugh, Charles Lang, and Michael Howery as witnesses. Respondent called Deputy Commissioner Robert Martinez and David Chefec as witnesses; he also testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1 and 3. I further find Respondent Not Guilty of Specification 2. I recommend that Respondent be suspended for five days and that he forfeit 25 vacation days.

ANALYSIS

The following facts are not in dispute. On May 17, 2017, Respondent and his [REDACTED] attended a concert at the Nassau Coliseum (“the Coliseum”), arriving at approximately 1930-1945 hours (T. 188-189). The featured performer was the band Metallica (T. 188). Respondent spent approximately 45 minutes in the parking lot of the Coliseum socializing with friends (T. 190). During this period, he consumed a sandwich and a beer (*Id.*, 222).

Respondent had a ticket for “general admission seating,” which was actually standing room only, on the floor of the Coliseum (T. 190-191, 223, 226). He entered the arena just before 2100 hours, when Metallica first took the stage (T. 191). While inside the arena, Respondent purchased another beer from a vendor and drank it (T. 192). There came a point where he became separated from his [REDACTED] and set out to find [REDACTED] (*Id.*). As Respondent searched for [REDACTED] he walked through the crowd on the main floor while holding a lit cigarette in his hand (T. 192-193). Smoking is prohibited inside the Nassau Coliseum (T. 39, 97).

Respondent’s possession of a lit cigarette was noticed by at least one member of Titan Global Investigations (“Titan”), the security firm hired for the event. A physical confrontation then ensued between Respondent and several Titan security guards, the circumstances of which are in dispute. As a result of the confrontation, Respondent ended up on the ground, face-up, with his hands raised over his face. At some point in the confrontation, the security guards became aware that Respondent was a Member of Service; the specific manner in which his status became known is in dispute.

Respondent was permitted to stand up but was escorted to an exit, where he was ejected from the Coliseum. Subsequent to his ejection, he re-entered the Coliseum and proceeded to the Medical Office, where he was examined by emergency medical technicians. While he was in the Medical Office, Respondent had a discussion with several members of Titan and Coliseum

management about the circumstances of his ejection. Respondent was eventually joined by his [REDACTED] and left the Coliseum.

No formal fitness for duty determination was ever made by an NYPD supervisor (T. 112).

Respondent reported for duty at the 70th Precinct on May 20, 2017 and served as Desk Officer (T. 242, 249-250). Respondent admitted that he arranged an exchange of duty in order to serve as Desk Officer, rather than the Patrol Supervisor, in deference to an injury to his left knee, which he asserted was incurred during the physical confrontation at the Coliseum (T. 249-251, 254). Despite this injury, Respondent took no sick days (T. 243, 254-255). Respondent conceded that he did not notify anyone in his chain of command about the incident at the Coliseum (T. 219). On August 29, 2017, Respondent, through counsel, filed a Notice of Claim against Nassau County, the Nassau Coliseum and Titan, claiming personal injury (T. 151; Resp. Ex. C). On April 19, 2018, Respondent commenced a civil action against the same parties which remained active as of the date of the trial before this Tribunal (T. 152, 180-181; Resp. Ex. D).

The following is a summary of the relevant trial evidence.

William Kosteas testified that he has been employed on a part-time basis by Titan for approximately seven or eight years. In addition, he has been employed full-time by the Department of Veterans Affairs police force for 21 years (T. 7). On May 17, 2017, he was working for Titan at the Nassau Coliseum during a Metallica concert (T. 8, 9).

Kosteas testified that he observed a member of Coliseum management pursuing Respondent as he walked past other concertgoers while holding a lit cigarette; according to Kosteas, Respondent's cigarette struck several people as he walked past them, causing sparks to fall to the floor (*Id.*). Kosteas' observation was made from approximately 30 feet away (T. 9). The person from management eventually caught up with Respondent and apparently placed a

hand on his shoulder; Respondent then turned around in what Kosteas described as “an aggressive manner” and “clenched his fists with the cigarette in his hand” (*Id.*).

Kosteas approached Respondent and asked him to put out his cigarette two or three times, which Respondent refused to do, responding twice with “F—k you” and “What do you want?” (T. 10). Kosteas then told Respondent, “Come with me, put it out over here.” Respondent swung his hand out and struck Kosteas’ palm with the lit cigarette,¹ causing it to fall to the ground (T. 10-11, 21). At that point, several Titan security guards surrounded Respondent and grabbed his arms. Respondent struggled with the security guards, resulting in one guard’s falling to the ground, Respondent’s falling on top of him and the second guard’s falling onto Respondent (T. 11). Several other security guards converged upon the scene until there were approximately six members of the security team involved with Respondent (T. 12). According to Kosteas, Respondent then yelled, “I’m NYPD; I’m a sergeant; I have my shield” (*Id.*).

According to Kosteas, he and the other members of the security team informed Respondent that they would let him get up and that they would escort him to the exit. As they walked him toward the exit, he protested, saying, “I’m a sergeant; I’m NYPD; I’m not going [any]where.” Kosteas observed that Respondent appeared unsteady on his feet, had slurred speech, bloodshot eyes, smelled strongly of alcohol and was sweating profusely (T. 12-13, 18, 24). He asserted that he had interacted with hundreds of intoxicated individuals during his 21 years with the Veterans Affairs Police Department and believed Respondent was highly intoxicated (T. 13-14). Kosteas testified that his interaction with Respondent lasted from 30 to 45 minutes (T. 18).

Kosteas claimed that he created a contemporaneous memorandum of the event once he returned home, after going off duty (T. 14-15). He provided this memorandum to his employers

¹ Kosteas conceded that the contact with the cigarette did not cause him any injury (T. 22).

approximately one year later (T. 34-36). Kosteas acknowledged being aware that Respondent had commenced a civil action against Titan (T. 36-37).

Michael Cavanaugh testified that he has been an employee of the New York State Department of Corrections² for five and a half years (T. 44). He has also been employed in the security field for 24 years and was employed by Titan as a supervisor on May 17, 2017 (T. 45-46, 54).

On that evening, Cavanaugh was part of the security team working at the Nassau Coliseum for the Metallica concert. At some point in the evening, he observed what he characterized as an altercation and saw Respondent laying on his back with several security guards standing around him (T. 46). Cavanaugh was waved over to the group by Person A and joined them; when he did so, he observed that Respondent had a NYPD badge visible on his person (T. 46-47). According to Cavanaugh, Respondent identified himself as an NYPD sergeant. He was instructed to get Respondent on his feet and escort him out of the building because of the altercation (T. 46). Person A informed Cavanaugh that Respondent had been caught smoking inside the Coliseum and a “tussle” had ensued, leading to the decision to eject him (T. 47).

According to Cavanaugh, Respondent had his hands raised at shoulder width, with his palms facing upward. He described this posture as “not being compliant . . . in a position of not giving up” (T. 47, 57). Cavanaugh acknowledged that he made a prior statement during a Department interview where he asserted that Respondent “was in a defensive position, laying on his back, his hands were approximately four or five inches off his shoulders but raised up as if he at this point was, he had given up and whatever struggle he was ensuing and was saying I’m done as he pulled out his badge” (T. 58). Cavanaugh added that while he made the prior

² The proper name of the agency is the New York State Department of Correctional Services.

statement, it was his position that Respondent had not completely submitted yet (*Id.*). He went on to explain that in his experience, if an individual were on the ground and was “still prepared for combat,” his hands would be up and ready. In contrast, a person who had completely submitted would have his hands down by his sides and would be willing to take verbal direction (T. 68, 72). He claimed that he had never experienced any individuals placing their hands up as a way to protect their face and body as they were lying on their backs (T. 70).

Cavanaugh testified that as Respondent was being escorted from the Coliseum, he was not being violent but “wasn’t going willingly.” As Respondent walked backward towards the exit, he kept trying to find a way to get around the security team to return to the concert, saying at least a dozen times that he was an NYPD sergeant and that he should be permitted to stay (T. 48, 52). Cavanaugh asserted that during the seven to eight minutes he spent interacting with Respondent, he observed him with slurred speech and eyes glazed over, leading him to surmise that he was intoxicated (T. 49, 51, 65). He acknowledged being aware that Respondent had commenced a civil action against Titan (T. 66).

Charles Lang testified that he has been an employee of Anschutz Entertainment Group (“AEG”), which runs operations at the Nassau Coliseum, for approximately five years (T. 74). Lang is a retired Member of Service from this Department (T. 74-75). On May 17, 2017, Lang encountered Respondent when he was summoned to the medical office in the Coliseum to address a report of a patron who claimed he had been injured during an altercation on the arena floor (T. 76). Lang was accompanied by Person B, who is also a retired Member of Service from this Department (*Id.*).

When Lang entered the medical office, Respondent was alone. Person B then approached Respondent and told him that he was being ejected for lighting a cigarette in the general admission area of the arena, suggesting that he “call it a night , to go home” (T. 77). According

to Lang, Respondent protested his ejection, claiming that he had done nothing wrong and demanded a refund (T. 77-78, 87-88). Lang testified that Person B told Respondent there would be no further issue as long as he left the building on his own but that if he refused to do so, the Duty Captain would be called and it would be “out of [their] hands what would happen after that”³ (T. 81).

Lang recalled that Respondent complained of some unspecified pain but that he could not see any injuries; Respondent was examined by Emergency Medical Technicians on site, who determined that no further treatment was warranted (T. 78-79). Lang noticed that Respondent appeared disheveled and agitated. While he asserted that Respondent had admitted to having several beers before the incident, Lang stated that he was unsure if Respondent was intoxicated (T. 80).

In September 2017, Lang became aware of a civil action initiated by Respondent; he was asked by AEG to contact Titan to obtain witness statements regarding the May 17, 2017 incident (T. 82, 94).

Respondent testified that as he walked through the general admission area to find his [REDACTED], Person A,⁴ a security guard, saw him smoking and told him to put out the cigarette (T. 194). Respondent claimed that he was unaware that smoking was prohibited inside the Coliseum and asserted that he saw “dozens” of other individuals smoking (T. 193). According to Respondent, he immediately put his cigarette on the floor and stubbed it out before he continued walking (T. 194, 227). He then felt two hands grab his shoulders from behind, then pull him backward until he hit the floor, striking his head and his elbows (T. 195, 228). He placed his ~~hands behind his head, then put~~ his hand up, yelling, “Stop, stop, stop” (*Id.*, 229). Respondent

³ Respondent identified Person A, an employee of Titan, through a Facebook search (T. 199; Resp. Ex. F).

This Department was notified of the incident on August 26, 2018 and the case was assigned to an investigator, Lieutenant Michael Howery, on September 11, 2018 (T. 112; Dept. Ex. 3).

⁴

claimed that at this point, Person A “stomped” on his left knee before kneeling down in front of him (*Id.*). Four more security guards then came over to where Respondent lay on the floor (T. 196). He described his state of mind as being in shock and scared, but passive (*Id.*). Respondent identified a photograph of himself on the Coliseum floor, surrounded by security guards, with Person A, who he claimed stomped on his knee, kneeling in front of him (T. 197; Resp. Ex. A).

According to Respondent, four security guards then took his arms and legs, picked him up from the floor and carried him 10 to 15 yards (T. 211). As they were doing so, one of the security guards yanked a chain attached to his belt, which caused Respondent’s Department shield to fall from his pants pocket (*Id.*, 229). A guard stated, “He’s a police officer;” Respondent denied identifying himself as a Member of Service before that point. The security guards then put him down and helped him to rise to his feet (214, 230-232).

Respondent testified that after he had been ejected, a person, whom he believed to be a supervisor, remained to speak with him. After some discussion, Respondent was permitted to re-enter the Coliseum and proceeded to the medical office, where he was provided ice for his elbows and knee (T. 215, 236). About 15 minutes later, Person B entered the office and introduced himself to Respondent; Person B identified himself as a retired Member of Service and asked whether Respondent was “on the job” (T. 216). When Person B asked Respondent what happened, he asked Person B to look for video because “what the security guard did was wrong” (*Id.*). Person B left the office, returning after a significant period of time, and reported that he had found video, but it was “too dark,” an assertion which Respondent did not believe (T. 216-217). According to Respondent, once he was told there was no video, he left the building (T. 217). By that time, the concert had concluded (*Id.*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent asserted that he did not make any notifications of the incident to his chain of command because:

“[T]his is a civil matter where an employee acted on behalf of his employer, where he’s acting on behalf of his job, where I received injuries from, and it’s a civil matter. My interpretation of the patrol guide of an unusual police incident, it states that domestic situations or ones where police officers are involved with alcohol, and this did not – this was a civil matter between myself and a private company where I received injuries.”

(T. 219-220). Respondent conceded that he had been subject to Department discipline on two previous occasions for failure to notify Operations of off-duty incidents but he reasserted his position that this obligation pertained only to domestic incidents (T. 253-254). Under examination by the Tribunal, Respondent asserted that he never reconsidered whether he should have made a notification to Operations even after he filed his civil action (T. 256-267).

Respondent denied ever fighting with the security guards, attempting to use his position as a sergeant for advantage or asking for free tickets to resolve the dispute (T. 220). Respondent denied ever requesting a refund (T. 239, 240).

David Chefec testified that he is the attorney who represents Respondent in his pending civil case against Nassau County, the Nassau Coliseum and Titan (T. 151-153; Dept. Ex. 5). Chefec testified that during the settlement negotiations, he received an email from George Langrove, the claims representative for Zurich, the insurance company representing Titan (T. 157-158). The email informed Chefec that “if we didn’t resolve it for the money that was on the table, that they had friends in the police department, that there was a Titan employee who was retired off the job, and that they would file papers with the police department to professionally

cause Mr. Sergeant Viola problems” (T. 158). After receiving that message, Chefec withdrew any offers of settlement; he stated his intention to proceed with the litigation and to move for a default judgment unless he received a timely answer⁵ (*Id.*).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account.

Respondent is an interested witness in this proceeding, as he is a party. Based upon the existence of an ongoing civil action in which he is the plaintiff, Respondent has an additional incentive to testify about this incident consistent with an interest in establishing a civil tort and maximizing a monetary recovery. Conversely, the witnesses employed by Titan, Messrs. Kosteas, Cavanaugh and Lang, have an equal incentive to portray their actions during this incident in such a manner to either avoid or minimize civil liability.

1. Conduct Prejudicial

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent refused to immediately extinguish a cigarette when asked to do so by Nassau Coliseum security personnel and became combative, resulting in his physical removal from the venue.

There is no dispute that Respondent was smoking a cigarette inside the Coliseum, as his admission and Kosteas’ observation establish. There is also no dispute that one of the members of the security team, whether Person A or Kosteas, confronted him and told him to put the cigarette

⁵ Chefec testified that at the time when he received the email from Langrove, Zurich was already in default.

out. Respondent's contention that he was unaware that smoking was prohibited is dubious and a factor weighing against his credibility.

Similarly, there is no dispute that Respondent was physically carried toward an exit, then permitted to walk toward the exit while escorted by security personnel, before being ejected from the premises. This portion of the encounter, as Respondent related it, is corroborated by Kosteas, Cavanaugh and Lang.

The sole remaining issue is whether or not Respondent became combative when he was confronted about smoking inside the Coliseum. I find that Respondent's version of events is an illogical narrative which makes no sense if he immediately complied with the order, as he alleges.

First, Respondent asserted that he immediately put out his cigarette when told to do so and then was accosted from behind by Person A, before being brought to the ground forcibly. This defies common sense: if there was immediate compliance, the security guards would have no motive to behave as Respondent alleged; in fact, such activity by the security guards could well incite mayhem in a crowded arena, an outcome which their presence was no doubt intended to prevent.

Second, Respondent claimed that once he was on the ground, Person A apparently deliberately stomped on his knee. The force described by Respondent seems objectively excessive for failure to comply with a smoking ordinance. Moreover, it appears to be punitive in nature, rather than reasonable force to ensure compliance with local regulations.

Kosteas testified that Respondent became belligerent when confronted about smoking and was subdued by several security personnel, including Person A, only after he flailed his hand and struck Kosteas' hand. In response to the security guards' grabbing Respondent's arms, he struggled, causing the guards and himself to fall to the ground. While Respondent asserted that

he injured his head when Person A pulled him off his feet and his knee when Person A stomped on it, it is equally plausible that he sustained both injuries as a result of two adult men falling to the ground with, and perhaps on top of, him. Kosteas' version is more plausible than Respondent's and supported by the credible testimony of other witnesses.

I further find that it is more likely that Respondent announced that he was a Member of Service of his own volition, rather than having his status discovered by the inadvertent pulling of a chain attached to his belt. In a scenario where he was being forcibly removed from a concert venue for violating a local ordinance, he effectively became a trespasser. It makes sense that he would attempt to assert his status as a member of law enforcement to regain some measure of agency.

While I do not credit Cavanaugh's apparent equivocation of whether Respondent's hands being held above his face were a sign of his surrender or continued belligerence, I do credit his description of Respondent's persistence at trying to find a way back into the venue as he was being escorted out of the building. This description was corroborated by Kosteas' credible testimony.

While discussed more fully below, Respondent's behavior is consistent with that of someone whose judgment may have been impaired by the consumption of alcohol, while not necessarily to the point of being unfit for duty. It is plausible that he may have also been embarrassed by the position he found himself in and overreacted to his perception of being singled out, as evidenced by his testimony that dozens of other patrons were also smoking.

Based upon the foregoing reasons, I find that Respondent did become combative with the security guards when he was admonished for smoking inside the Coliseum. I further find that such behavior was to the prejudice of the good order and efficiency of the Department.

Accordingly, I find Respondent Guilty of Specification 1.

2. Unfit for Duty

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent was unfit for duty as a result of consuming an intoxicant. While Respondent admitted to consuming two beers, that amount of consumption would not by itself support a finding that he was unfit for duty. While Kostas and Cavanaugh testified that Respondent bore some of the common law indicia of intoxication (*i.e.* glassy eyes, slurred speech, and the scent of alcohol) and was, in their opinion, intoxicated, Lang testified that he could not be sure that Respondent was intoxicated. Most importantly, no member of this Department made a fitness for duty determination.

Under these circumstances, there is insufficient evidence to support a finding that Respondent was unfit for duty as a result of excessive consumption of alcohol; accordingly, I find Respondent Not Guilty of Specification 2.

3. Failure to Notify Operations Unit

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to notify the Operations Unit after being involved in an off duty incident.⁶

Patrol Guide 212-32 requires uniformed members of service who are at the scene of an unusual occurrence as a participant or a witness to remain at the scene and request the response of the patrol supervisor in the precinct of occurrence. If the incident occurs outside the City, the uniformed member of the service concerned is required to promptly notify the Operations Unit (P.G. 212-32, Note).

⁶ While the language of the specification relates to an unusual police occurrence, the Patrol Guide procedure which is cited relates to off-duty incidents; accordingly, the analysis of the evidence relating to this alleged misconduct will be governed by that procedure.

At the outset, I find Respondent's interpretation of this Patrol Guide procedure as relating only to domestic violence incidents unpersuasive. The note to the Procedure states: "For purposes of this procedure an unusual police occurrence *shall include* (emphasis added) family disputes and other incidents of domestic violence in which the officer is either a participant or a witness" (*Id.*). The Tribunal, therefore, will construe the term "unusual police incident" to be inclusive of, but not limited to, family disputes and incidents of domestic violence (*See, e.g., Disciplinary Case No. 2015-14953* [March 28, 2017]; *Disciplinary Case Nos. 2013-10985 & 2014-12174* [September 2, 2015]; *Disciplinary Case No. 2013-10728* [July 27, 2015]; *Disciplinary Case No. 2013-9187* [April 2, 2015]).

There is no dispute that Nassau County Police were not called by the security guards or by Coliseum management in response to this incident. There is also no dispute that the security guards and Coliseum management became aware of Respondent's status as a Member of Service. Lang testified that the prospect of calling the Duty Captain was broached as they were attempting to convince Respondent to leave the premises. Finally, Respondent admitted that he made no notifications to anyone inside the Department, even when he felt he needed an inside assignment as the Desk Officer, as opposed to a Patrol Supervisor assignment, once he returned to duty on May 20th.

Thus the question presented is whether an altercation in which Respondent was ejected from a premises by security guards qualifies as an "unusual police occurrence."

In the course of human events, individuals are sometimes involved in circumstances in which they would prefer that their behavior not be held up to official scrutiny after the fact. Based upon the credible evidence in the record, it appears that this incident is one such circumstance. While it is true that Respondent was never arrested and that the Tribunal found insufficient evidence to find him guilty of being unfit for duty, his conduct at the Coliseum was

far from exemplary. It is also fair to say that if Respondent had made a report of the incident to the Operations Unit, or even to his chain of command, that he would have been “placing himself on report.” It would have then been left to the judgment of cognizant authority whether any formal or informal discipline might ensue.

The Patrol Guide procedure requiring the reporting of all unusual police occurrences makes no exception for reports which may incriminate the reporter; that said, it would be naïve to ignore the cultural norm against self-reporting. Nevertheless, members of this Department are held to a higher standard than most civilian employees. Moreover, while Respondent may have preferred to keep the matter between himself and the Coliseum, he initiated a civil action for injuries allegedly caused by the security guards during the altercation, which could impact his post-ejection fitness for duty. The Department has the right to assess the fitness of its members. It is also noteworthy that instead of taking a sick day in deference to his injured knee, Respondent chose to seek an indoor assignment, rather than go out on patrol. Given that Members of Service have unlimited sick leave, it would initially appear that there was no need for him to forbear from using that option. A more plausible explanation, however, is that the rationale behind this decision was to keep his injury and the circumstances of its infliction from the knowledge of the Department. This decision can also be construed as evidence of consciousness of guilt.

Under the circumstances presented in this case, I find the incident should have been reported to the Operations Unit, inasmuch as Respondent was outside the City of New York. In reaching this conclusion, the Tribunal is not establishing a standard of virtue; whenever the Department may be exposed to criticism or scrutiny due to the conduct of one of its Members, it is incumbent upon that Member to make a prompt, candid report of all pertinent facts, even at the risk of embarrassing himself. Accordingly, I find him Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has recommended that Respondent be suspended for 15 days, forfeit 30 vacation days and be placed on one-year dismissal probation. Inasmuch as I have acquitted Respondent of the misconduct alleged in Specification 2, that recommendation is excessive.

While the Department Advocate cited a number of Department precedents in support of the recommended penalty, I find the facts of this case more comparable with those in *Disciplinary Case No. 2018-18548* (September 3, 2019) (Six-year police officer with no disciplinary record negotiated a penalty of 30 vacation days and was placed on one-year dismissal probation for (i) engaging in a physical altercation with another person while off-duty and (ii) failing to remain at the scene of said altercation and notify the Department's Operations Unit).

Respondent has an extensive prior formal disciplinary record and has previously served a one-year period of dismissal probation in 2014.

While Respondent apparently enjoys a reputation for commendable performance of duty, as evidenced by Deputy Commissioner Martinez's testimony and the letters of support in evidence, his conduct on the evening of May 17, 2017 is at odds with the picture they paint of Respondent's professional persona.

Based upon the credible evidence in the record, I find that this was a regrettable incident that Respondent, through his own actions, escalated to the point where he was forcibly ejected

from the concert venue. I find Respondent's assertion that he was unaware that smoking was prohibited inside the Nassau Coliseum to be dubious. Instead of immediately complying with the request to extinguish his cigarette, he chose to be recalcitrant, a posture he would not likely appreciate in the performance of his own professional duties. As a supervisor in this Department, he is expected to exercise better judgment than that displayed that evening. Respondent's contumacious behavior, his significant disciplinary history, and the Department's policy on progressive discipline, all necessitate a substantial sanction.

Accordingly, I recommend that Respondent be suspended for five days without pay. In addition, I recommend that Respondent forfeit 25 vacation days.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

APR 21 2020

DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT CHRISTOPHER VIOLA
TAX REGISTRY NO. 931386
DISCIPLINARY CASE NO. 2018-19569

Respondent was appointed to the Department on July 1, 2002. On his last three annual performance evaluations, he received 4.5 overall ratings of "Highly Competent/Extremely Competent" for 2016, 2017, and 2018. He has been awarded nine medals for Excellent Police Duty. [REDACTED]

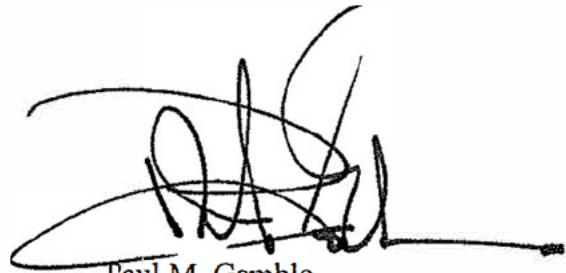
Respondent has a formal disciplinary record. In 2012, he forfeited ten (10) vacation days for misconduct that was the subject of two disciplinary cases. In the first matter, Respondent pled Guilty to failing to promptly notify the Operations Unit after being involved in a police incident. In the second case, Respondent pled Guilty to sending multiple text messages to [REDACTED] requesting that she dismiss criminal charges that she was pursuing against his friends.

In 2014, Respondent forfeited 30 pre-trial suspension days without pay, was placed on one-year dismissal probation, and agreed to cooperate with counseling after being charged with misconduct in two separate disciplinary cases. In the first matter, Respondent pled Guilty to utilizing a Department computer to conduct unauthorized inquiries [REDACTED] and another individual. In the second case, Respondent pled Guilty to (i) engaging in a physical altercation [REDACTED] and (ii) failing to request the response of a patrol supervisor to the incident scene.

Finally, in 2017, Respondent forfeited ten (10) vacation days after he pled Guilty to instructing a subordinate to classify an incident as petit larceny on a complaint report when it should have been classified as a robbery.

Respondent also has a substantial monitoring history. He was placed on Level 2 Discipline Monitoring from February 3, 2014, which continued until May 5, 2014, when he was placed on dismissal probation as noted above. He was later placed on Level 1 Discipline Monitoring from May 9, 2016 to July 20, 2017. Most recently, Respondent was placed on Level 1 Discipline Monitoring on April 10, 2019, in connection with the instant matter; that monitoring remains ongoing.

For your consideration.

A handwritten signature in black ink, appearing to be 'Paul M. Gamble', written over a horizontal line.

Paul M. Gamble
Assistant Deputy Commissioner Trials